

Message Text

CONFIDENTIAL

PAGE 01 GENEVA 00389 241239Z

45

ACTION L-02

INFO OCT-01 EUR-12 IO-10 ISO-00 DODE-00 OIC-02 SS-15 NSC-05

OES-03 EPA-01 CEQ-01 CU-02 SSO-00 INRE-00 USIE-00

NSCE-00 CIAE-00 PM-03 INR-07 ACDA-05 NSAE-00 PA-01

RSC-01 PRS-01 SP-02 TRSE-00 SAJ-01 /075 W

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FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 159

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION NATO

C O N F I D E N T I A L GENEVA 0389

E.O. 11652: GDS

TAGS: CSCE, PFOR, XG

SUBJECT: CSCE: POTENTIAL LEGAL DIFFICULTIES

REF: STATE 13704

1. BEGIN SUMMARY: WE CARRIED OUT REFTEL INSTRUCTIONS AT NATO DELEGATION HEADS CAUCUS AFTERNOON JAN 23. ALL AGREED ISSUE WAS IMPORTANT AND SHOULD BE RESOLVED AS SOON AS POSSIBLE. SPECIAL CAUCUS SESSION HAS BEEN SET FOR TUESDAY MORNING JAN 28, BY WHICH TIME OTHER DELEGATIONS HOPE TO HAVE INSTRUCTIONS FROM CAPITALS. USDEL WILL ALSO NEED FURTHER GUIDANCE FOR THE TUESDAY MORNING MEETING. END SUMMARY.

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PAGE 02 GENEVA 00389 241239Z

2. DURING JAN 23 CAUCUS WE DREW FULLY ON INSTRUCTIONS

AND GAVE OTHER DELEGATIONS TEXT (PARA 6 REFTTEL) OF THE DISCLAIMER WE PROPOSE SHOULD BE ISSUED AS A STATE II CONFERENCE RESOLUTION OR AS A STATEMENT BY THE CHAIRMAN OF THE COORDINATING COMMITTEE IN WHICH ALL DELEGATIONS WOULD CONCUR. IN RESPONSE TO QUESTIONS, WE INDICATED THAT THE ENVIRONMENTAL TEXT ALREADY PROVISIONALLY REGISTERED CONTAINS LANGUAGE WHICH COULD BE VIEWED AS CREATING LEGAL AGREEMENTS. WE EXPLAINED, HOWEVER, THAT OUR MAIN PROBLEM WAS NOT WITH THE ENVIRONMENTAL TEXT BUT WITH THOSE IN THE HUMAN CONTACTS AREA WHERE THE PREAMBULAR LEVEL OF COMMITMENT LANGUAGE MIGHT BE CONSTRUED TO COMMIT THE USG TO TAKE ACTIONS (E.G., WITH RESPECT TO FAMILY REUNIFICATION AND MARRIAGE) THAT WERE BEYOND ITS COMPETENCE.

3. BRITISH AMB. ASKED WHETHER US LEGAL DIFFICULTIES COULD NOT BE MET BY A UNILATERAL US STATEMENT AT STAGE III REPEAT STAGE III, EITHER DURING CONFERENCE ITSELF OR IN MORE INFORMAL CONTEXT ON THE FRINGES OF THE PROCEEDINGS SUCH AS IN RESPONSE TO AN INSPIRED PRESS QUESTION. HE SPECIFICALLY ASKED THAT WE REFER THIS SUGGESTION TO WASHINGTON. WE AGREED TO DO SO BUT SAID WE DOUBTED THAT THIS APPROACH WOULD FULLY SATISFY OUR CONCERNS. BRITISH WILL EXPECT A RESPONSE TO THEIR QUESTION AT THE TUESDAY MORNING MEETING. REQUEST GUIDANCE.

4. SEVERAL DELEGATIONS SAID THAT, SINCE THE HUMAN CONTACTS PREAMBLE IS STILL UNDER NEGOTIATION, PERHAPS THE SIMPLEST WAY OF MEETING OUR PROBLEMS WOULD BE TO AMEND IT AND INSERT Milder LEVEL OF COMMITMENT LANGUAGE. WE RESPONDED THAT, IF THE LEVEL OF COMMITMENT LANGUAGE COULD BE APPROPRIATELY AMENDED, OUR PROBLEMS WOULD DISAPPEAR. HOWEVER, OTHER DELEGATIONS WERE RELUCTANT TO CONSIDER CHANGING THE PRESENT LANGUAGE IN WAYS WHICH WOULD SUGGEST A WEAKER OBLIGATION ON THE EASTERN EUROPEAN COUNTRIES TO CARRY INTO EFFECT THE PROVISIONS OF THE VARIOUS HUMAN CONTACTS PAPERS.

5. POSSIBILITY OF AMENDING THE LEVEL OF COMMITMENT FORMULA DOUBTLESS WILL BE CANVASSED FURTHER AT THE TUESDAY CONFIDENTIAL

CONFIDENTIAL

PAGE 03 GENEVA 00389 241239Z

MEETING, AND WE WOULD LIKE TO BE ARMED WITH TWO OR THREE ALTERNATIVE FORMULATIONS WHICH DEPARTMENT WOULD CONSIDER CLEARLY DECLARATORY IN NATURE. SUGGEST ONE OR MORE OF THOSE FORMULATIONS INCORPORATE PHRASE "IN ACCORDANCE WITH THEIR COMPETENCE," WHICH APPEARS IN INFORMALLY AGREED (MENTALLY REGISTERED) SENTENCE IN TEXT ON ACCESS TO CULTURAL ACHIEVEMENTS. FULL TEXT OF THAT SENTENCE READ AS FOLLOWS:

BEGIN TEXT:

TO PROMORE FULLER MUTUAL ACCESS BY ALL TO THE
ACHIEVEMENTS - WORKS, EXPERIENCES AND PERFORMING
ARTS - IN THE VARIOUS FIELDS OF CULTURE OF THEIR
COUNTRIES, AND TO THAT END TO MAKE THE BEST
POSSIBLE EFFORTS, IN ACCORDANCE WITH THEIR
COMPETENCE, MORE PARTICULARLY:

END TEXT. ABRAMS

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NNN

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